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ABSTRACT

Reported are 22 new cases and provided is information on 27 previously reported cases related to mental retardation and the law. Cases are grouped according to 10 topics (sample cases in parentheses): classification; confidentiality/access to records; commitment; criminal law (O'Brien v. Superior Court); education (California Association for Retarded Citizens v. Riles); employment; guardianship (Holtzer v. Mathews); protection from harm (Romeo v. Youngberg); sterilization (Stump v. Sparkman); and treatment (Donaldson v. O'Connor). Featured is an analysis of due process issues involved in decisions of parents or guardians to commit juveniles to institutions for the mentally retarded. The Supreme Court's rulings in Kremens v. Bartley and Parham v. J.L. and J.R. are examined. (CL)

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MENTAL RETARDATION and the LAW

A Report on Status of Current Court Cases

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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JANUARY 1978

This issue of "Mental Retardation and the Law" contains reports on 22 new cases (indicated as new in the text by an asterisk) and updated information on 27 cases reported in previous issues. Also included is a feature article, "Can Parents 'Volunteer' Their Children Into Mental Institutions: An Analysis of Kremens v. Bartley and Parham v. J.L. and J.R."

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of the Assistant Secretary for Human Development
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TABLE OF CONTENTS

		Page
I.	FEATURE	1
II.	CURRENT CASES	9
	A. CLASSIFICATION	9
	Illinois: People of the State of Illinois v. Donald Lang	9
	B. CONFIDENTIALITY/ACCESS TO RECORDS	9
	Illinois: Beavers v. Sielaff*	9
	C. COMMITMENT	10
	District of Columbia: Poe v. Califano (Weinberger)	10
	Vermont: Frederick v. Mulcahy*	10
	D. CRIMINAL LAW	11
	California: In re Newmann*	11
	California: O'Brien v. Superior Court*	12
	District of Columbia: United States v. Jackson*	12
	Louisiana: Louisiana v. Bennett*	13
	E. EDUCATION	14
	Arizona: Eaton, et al. v. State of Arizona	14
	California: California Association for Retarded Citizens v. Riles*	14
	California: Crowder v. Riles*	14

* Cases reported for the first time in this issue are marked with an asterisk.

		Page
Connecticut:	Connecticut Association for Retarded Citizens v. State Board of Education*	15
Massachusetts:	Allen v. McDonough*	15
Mississippi:	Mattie T. v. Holladay	15
New Jersey:	New Jersey Association for Retarded Citizens v. New Jersey Department of Human Resources* . . .	17
North Carolina:	North Carolina Association for Retarded Children, et al. v. State of North Carolina, et al.	17
Tennessee:	Rainey, et al. v. Tennessee Department of Education	18
F. EMPLOYMENT.		18
New Jersey:	Schindenwolf, et al. v. Klein, et al.	18
G. GUARDIANSHIP.		18
Illinois:	Rud v. Dahl*.	18
Michigan:	Schultz v. Borradaile	19
Michigan:	Todd and Baldridge v. Smith*.	19
Pennsylvania:	Holtzer v. Mathews*.	19
Pennsylvania:	Vecchione v. Wohlgemuth.	19
H. PROTECTION FROM HARM.		20
Michigan:	Karolak v. Dempsey*	20
New York:	New York State Association for Retarded Children v. Carey. [Willowbrook]	20
Pennsylvania:	Romeo v. Youngberg	21

		Page
I.	STERILIZATION	21
	District of Columbia: Relf v. Weinberger; National Welfare Rights Organization, et al. v. Weinberger, et al.	21
	Indiana: Stump v. Sparkman	22
J.	TREATMENT	22
	Alabama: Wyatt v. Hardin [Stickney].	22
	District of Columbia: Dixon v. Weinberger. . . .	22
	District of Columbia: Evans and the United States v. Washington . . .	22
	Florida: Donaldson v. O'Connor	22
	Kentucky: Kentucky Association for Retarded Citizens v. Conn*	23
	Louisiana: Gary W. v. State of Louisiana. . . .	24
	Maine: Wouri v. Zitnay [Rosser].	24
	Maryland: Bauer v. Mandel	24
	Maryland: United States v. Solomon, et al.	24
	Massachusetts: Brewster v. Dukakis*	24
	Minnesota: Welsch v. Dirkswager [Likins]. . . .	25
	Missouri: Caswell v. Califano*.	25
	Montana: United States v. Mattson.	26
	Nebraska: Horacek, et al. v. Exon, et al.	26
	New Jersey: In re C.S.*.	26
	New York: New York State Association for Retarded Citizens, Inc. v. Carey [Wassaic]	27
	Ohio: Barbara C., et al. v. Moritz, et al.* . .	27

Page

Ohio: Bettencourt v. Rhodes*. 27

Ohio: Ohio Association for Retarded Citizens v. Moritz. 30

Ohio: In the Matter of Deborah P.*. 30

Pennsylvania: Halderman v. Pennhurst State School and Hospital. 31

III. CASES WITH NO KNOWN NEW DEVELOPMENTS AND CLOSED CASES REPORTED IN EARLIER ISSUES OF "MENTAL RETARDATION AND THE LAW" 32

I. FEATURE

CAN PARENTS "VOLUNTEER" THEIR CHILDREN INTO MENTAL INSTITUTIONS: AN ANALYSIS OF KREMENS v. BARTLEY AND PARHAM v. J.L. AND J.R.

The Bartley case was one of several cases brought at roughly the same time challenging the constitutionality of statutory provisions which permit commitment of juveniles to institutions for the mentally retarded simply upon application of parents or guardians, regardless of the wishes of the juvenile and without requiring a hearing or other due process protections. When the Supreme Court noted probable jurisdiction in this case and set it down for oral argument, it was hoped by court-watchers that the application of the due process clause in the context of such "voluntary" admissions of children would be clarified. Moreover, many persons assumed that in the process of deciding this children's rights issue, the Court would also set forth some general guidelines for procedural and possibly substantive protections for the civil commitment of mentally retarded and mentally ill adults.

The Bartley and Parham cases have been among the most controversial in recent times because they require the resolution of important values which are in conflict. Historically the Supreme Court has taken great pains to protect the integrity of the family unit from governmental interference. In doing so, it has recognized a presumption in favor of parental prerogatives, stating that "the custody, care and nuture of the child reside first in the parents." Prince v. Massachusetts, 321 U.S. 158, 166 (1944). But it has also stressed that the state may intervene with regard to parental decisions where those "decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens." Wisconsin v. Yoder, 406 U.S. 205, 234 (1972). Thus, the state is recognized as having an interest superior to that of the parents when it seeks to protect battered or neglected children or when it requires regular school attendance or vaccinations. While most of the value clashes in this area previously have pitted parents against the state, a more recent series of cases have recognized that juveniles have some personal rights which are separate and distinct from their parents' interests, and that the presumption that parents act in their child's best interests is subject to rebuttal. Thus, children have been accorded their own counsel in juvenile court proceedings and have been held to have an independent right to medical and counseling services, contraceptive information and abortions, which is not subject to a parental veto. In the Bartley and Parham cases, children's advocates are seeking to establish that the potential harm to children from an erroneous commitment decision is so great and the potential deprivation of their rights to autonomy and liberty so severe that there must be due process hearing before admission or commitment based upon application of the parent or guardian is approved. The Supreme Court's reaction to this position has been anxiously awaited by observers of all persuasions.

THE THREE-JUDGE DISTRICT COURT OPINION IN BARTLEY

As reported earlier in Mental Retardation and the Law, the named plaintiffs in this case were youths who were involuntarily committed to Pennsylvania mental health facilities pursuant to statutory provisions applicable to citizens 18 years old or younger. They sued on behalf of all citizens 18 years old or younger who might be committed to facilities for the mentally ill or mentally retarded under the challenged procedures.

Defendants were various state officials responsible for the supervision of Pennsylvania's mental health facilities.

Plaintiffs challenged the constitutionality of the Pennsylvania statutory provisions then in effect which permitted commitment of juveniles to institutions for the mentally ill and mentally retarded upon application of parents or guardians without substantial safeguards, such as the right to notice, the right to a precommitment hearing and the right to counsel.

After plaintiffs filed this action, the Department of Public Welfare adopted additional procedural safeguards for children admitted or committed to institutions. These regulations substantially increased the procedural safeguards afforded minors 13 years of age or older. But plaintiffs contended that the regulations did not cure the relevant statutes of their constitutional infirmities because they did not apply to children 13 years old or younger, required no precommitment hearing, and designated no time by which a post-commitment hearing must be held.

On July 24, 1975, a three-judge panel of the United States District Court declared the challenged commitment statutes unconstitutional on their face and as applied to plaintiffs and others of their class.

The court held that due process requirements apply to civil commitment proceedings involving minors. Specifically, the court ruled that plaintiffs and others of their class were entitled to:

1. a probable cause hearing within 72 hours from the date of their initial detention;

2. a post-commitment hearing within two weeks from the date of their initial detention;

3. written notice, including the date, time, and place of the hearing, and a statement of the grounds for the proposed commitment;

4. counsel at all significant stages of the commitment process and if indigent the right to appointment of free counsel;

5. the right to be present at all hearings concerning their proposed commitment;

6. a finding by clear and convincing proof that they are in need of institutionalization; and

7. the rights to confront and to cross-examine witnesses against them, to offer evidence in their own behalf, and to offer testimony of witnesses.

Recognizing that "parents, as well as guardians ad litem or persons standing in loco parentis, may at times be acting against the interests of their children," the court also held:

> "In the absence of evidence that the child's interests have been fully considered, parents may not effectively waive [these] personal constitutional rights of their children."

The court also held, however, that all of these procedural protections, except notice and the right to counsel, could be waived under appropriate circumstances by a child or his counsel, with court approval.

Writing in dissent, District Judge Broderick expressed the view that "the majority opinion has prescribed 'an over-dose' of due process which could prove fatal to the voluntary commitment of children for inpatient treatment for mental or emotional disorders."

As the dissenting judge explained:

> "I do not take the position that children have no rights, I simply feel that the procedures outlined by the Pennsylvania legislature, when balanced against the traditional rights of parents to control the rearing of their children, afford sufficient protection to the child."

According to the dissenting judge, the adversary nature of the procedure which the majority required would significantly increase the trauma accompanying the institutionalization of sick children and would further stigmatize the committed child.

In July 1976, a year after the district court's July 1975 decision, and after the Supreme Court had already noted probable jurisdiction, a new statute was enacted, partially repealing the provisions held to be unconstitutional. (The 1976 Act does not apply to the mentally retarded.) Under the 1976 Act, a mentally ill child 14 or over in Pennsylvania may voluntarily admit himself, but his parents may not do so. Those 14 and over may withdraw from voluntary treatment by giving written notice. Those under 14 may be released on the parents' request, and "any responsible party" may petition for release.

THE ARGUMENT AND SUPREME COURT DECISION IN BARTLEY

Oral argument before the Supreme Court in the Bartley case took place on Wednesday, December 1, 1976. The argument was lively, with an unusual number of questions and comments from the Justices. Norman Watkins, Deputy Attorney General of Pennsylvania and lawyer for the defendant-appellants, went first and his argument was immediately interrupted by Justice Rehnquist who asked whether he intended to discuss the question of the class that was before the court.

Chief Justice Burger interrupted the argument a moment later to ask for clarification whether the plaintiffs challenged the old Act alone or the Act as modified by the subsequent regulations. He then asked what the effect of the new Pennsylvania statute was.

A question which came up several times during the argument and which was raised initially by Justice Rehnquist was whether there was any state action in the situation where parents "volunteered" their children into Pennsylvania institutions. Mr. Watkins indicated that although the conflict is between the parent and the child, not between the parent and the state, "it's clear that the state is treating the patients...pursuant to state law and the state is, in fact, holding the plaintiffs." Next came a follow-up queston whether there was state action if the parents "with private physicians, take a child within this age category to a private hospital." Mr. Watkins maintained that the issues were the same whether the child was placed in a private institution or a public institution because admission to private institutions is regulated by state law, a position in which Mr. Ferleger, lawyer for the plaintiff-appellees, subsequently concurred.

Another provocative question came from Justice Marshall, who wondered why Pennsylania had chosen in its new Act to treat 14-year-olds exactly as adults for purposes of mental commitment when 14-year-olds were not permitted to drive cars, drink liquor, or vote. When Mr. Watkins replied that the legislature had made the judgment that at age 14 children are developmentally able to make judgments concerning commitment, Justice Marshall commented "on the other hand if you are dealing with either mentally ill or mentally retarded people, even adults, there is some question about their ability to make decisions for themselves, isn't there?" And he pointed out that "that's why courts appoint guardians ad litem in some of these situations, is it not?"

Again the questioning came back to state action issues with Justice Stewart and Justice Rehnquist asking whether a parent's decision to send a child to a public school involves state action in the due process clause. When Mr. Watkins replied, "Absolutely not," the Justices then asked why should there be state action with a parental decision to send

a child to a mental institution. Mr. Watkins' reply was that "here you have state psychiatrists examining the child and recommending the care." Justice Marshall added an additional distinction with his comment, "Of course, in the public school, the child comes home." Mr. Watkins conceded under questioning from Justice Rehnquist that the state action issue had not been raised at the trial court level or until Justice Rehnquist had asked the question on this appeal.

During his argument on behalf of the plaintiff-appellees, Mr. Ferleger was first pressed as to whether an affirmance of the district court's opinion would apply to private institutions in Pennsylvania as well as public. The Court sought clarification whether his position was (1) that there is state action when private facilities follow state law or (2) simply that "as a matter of state law Pennsylvania requires that private facilities provide the same procedural protections as do public facilities, and, therefore, any decision in this case respecting public facilities would, as a matter of state law, affect the private facilities." As Justice Stewart put it, "It's not a matter of acting under color of state law, they are just simply bound by state law to behave the same way; isn't that it?"

The next question was whether the plaintiffs agreed with the state of Pennsylvania that referees could not be appointed by the state courts to perform the function mandated by the federal court. He was also asked whether all of the eight or nine thousand children presently committed in Pennsylvania would have to be "reprocessed even if they don't want to be reprocessed?" "No," answered Ferleger, explaining that the lower court was clear in its opinion that it did not expect a full hearing to take place every time a child is committed. The only elements of due process that could not be waived were notice and counsel.

The next question was, "How does a mentally ill fifteen-year-old child consummate a waiver?" Chief Justice Burger wondered whether a decision whether the child is competent to waive his other procedural rights as set forth in the district court opinion might itself require "quite a substantial hearing process." Ferleger's response was that "those questions of competency to waive counsel or other procedural protections are present in any mental hearing." Chief Justice Burger then wondered whether requiring a 15-year-old child to go through a hearing process might have a traumatic impact on the child's mental condition. Ferleger replied that the trauma of the hearing, compared with the potential trauma of indefinite commitment to an institution, was trivial.

Justice Powell asked whether the plaintiffs were defending the full-range procedural due process prescribed by the district court.

Another question was, "Assuming we reach the issue of what process is due, what do you think of the suggestion that an independent board of psychiatrists would be appropriate to make the independent decision which you suggest is necessary?" Ferleger replied that his personal

opinion was that an independent tribunal of some sort might withstand constitutional scrutiny, but that he wondered whether it should be composed solely of psychiatrists in that the commitment decision was a social and legal decision as well as a medical decision.

Near the end of Mr. Ferleger's argument Justice Stevens asked him to comment briefly on whether requiring an attorney for each child, particularly in the profit sector, would not add a significant element of cost, and, secondly, whether the proper disposition now would not be to remand the case for consideration in light of the new statutes. Chief Justice Burger asked, "Do you not see any risk at all that an overdose of due process might be just as dangerous as an overdose of insulin shock treatment on a mental patient?"

Unfortunately, persons waiting anxiously for a decision in the important substantive issues raised by the Bartley case received no satisfaction from the Supreme Court. On May 16, 1977, the case was vacated and remanded to the district court on mootness grounds.

The basis for the majority's reasoning was as follows: At the time the complaint was filed, each of the named plaintiffs was older than 14, and insofar as the record indicates, mentally ill. Because the new Act treats mentally ill juveniles 14 and older as adults, it "moots" the claims of all of the named appellees, and all others 14 or older and mentally ill. For all of the original named plaintiffs, the new Pennsylvania Act completely repealed and replaced the statutes challenged below and obviated their demand for a hearing and other procedural protections, because they and other mentally ill children over 14 now have total freedom to leave the hospital and cannot be forced to return absent their consent.

The majority recognized that the district court certified the case below as a class action on behalf of all mentally ill and mentally retarded children under 18 years of age. Ordinarily, once a class is so certified, an action may be maintained even if the status of the named individual plaintiffs subsequently changes. But according to the majority, "we have never adopted a flat rule that the mere fact of certification of a class by the district court was sufficient to require us to decide the merits of the claims of unnamed class members when those of the named parties have become moot."

According to the majority,

> "While there are 'live' disputes between unnamed members of portions of the class certified by the District Court,...these disputes are so unfocused as to make informed resolution of them almost impossible....We conclude that before the 'live' claims of the fragmented subclasses remaining in this litigation can be decided on the merits, the case must be remanded to the district court for consideration of the class definition, exclusion of those whose claims are moot, and substitution of class representatives with live claims."

Noting the distinction between older and younger juveniles, and between mentally ill and mentally retarded children, recognized by the Pennsylvania regulations and new Act, the Supreme Court cautioned that when the substantive issues are again litigated before the district court, careful attention must be paid to the differences between mentally ill and mentally retarded and between the young and the very young.

Justice Brennan, with whom Mr. Justice Marshall joined, wrote an indignant dissent to the majority opinion. According to Justice Brennan,

> "As written, today's opinion can only further stir up the jurisdictional stew and frustrate the efforts of litigants who legitimately seek access to the court for guidance on the contents of fundamental constitutional rights.
>
> "In truth, the Court's purported concern for the 'lack of homogeneity' among the children in the class is meaningless. The district court's judgment established and applied a minimum threshold of due process rights available across-the-board to all children who are committed to mental facilities by their parents pursuant to Pennsylvania law. The core of the mandated rights, essentially the non-waivable appointment of counsel for every child and the convening of commitment hearings within specified time periods, applies equally to all Pennsylvania children who are subject to parental commitment. In reviewing the propriety of these threshold constitutional requirements, our inquiry is not to any meaningful extent affected by the intervening change in Pennsylvania law."

ARGUMENT IN THE PARHAM CASE

While the ultimate decision of the Supreme Court in Bartley was to avoid deciding the issues posed upon their merits, the Parham case, which was argued on December 6, 1977, raises essentially the same issues. Thus, we may yet have a decision on the merits which will no doubt have a vast impact on commitment of mentally retarded children to institutions and possibly upon the due process appropriate to commitment of adults as well. Parham was a class action filed by two children who alleged that they and other similarly situated children in Georgia state mental institutions were deprived of liberty by state laws permitting voluntary admissions of minors by parents or guardians. In February 1976 a three-judge federal district court (which included now Attorney General Griffin Bell) found that "to unnecessarily confine...a child in a mental hospital and thereby cause him to possibly suffer severe emotional and psychic harm, to demean himself, and to magnify social ostracism" deprives him of his constitutional right to liberty "just as much if not more so than a child is deprived of his freedom by being civilly committed as a juvenile delinquent." The Georgia law, the district court asserted, "supplies not the flexible due process that the situation of the plaintiff children demands, but, instead, absolutely no due process."

After the Bartley case was remanded as moot, the Supreme Court agreed to hear oral argument in Parham.

At the oral argument on December 6, 1977, the questioning was substantially similar to that which took place in Bartley. R. Douglas Lackey, Assistant Attorney General for Georgia, argued first that the district court's focus was flawed in that it focused on the "wrong interest." "You must look at the interest itself -- the child has challenged his parents' medically indicated decision. The interest is whether a child can challenge a parent's decision. This is inconsistent with contemporary notions of the parent-child relationship as well as with the history of Western civilization -- children cannot make certain decisions for themselves." Justice White asked whether the state was suggesting that a parent's decision alone is enough. Mr. Lackey replied, "No, a doctor and parent must act together." Justice Marshall then asked whether the doctor who must approve admission under Georgia law could be an obstetrician, to which Mr. Lackey replied, "Yes." Mr. Lackey stressed the point that the child does not have a liberty right vis-a-vis his parents.

During the argument on behalf of the children, John L. Cromartie, Jr., was asked by Chief Justice Burger why the process of seeing a state psychiatrist is not sufficient protection for the child. He was also asked by Chief Justice Burger whether he was "arguing that there is an inherent and universal conflict of interest between parents and children?" Cromartie replied, "No," and noted that in many instances the information which came to reviewing mental health professionals was unverified and frequently erroneous. Justice Stewart and Chief Justice Burger both expressed concern that the Court was asked to upset a century-old presumption that parents make decisions in the best interest of their children. In answer to the Chief Justice's question, "Are parents then a suspect class?" Mr. Cromartie pointed to evidence that where homelike situations are very stressful, parents sometimes cannot act rationally and without conflict in deciding whether the problem is the family's or the child's and whether commitment of the child is advisable.

A decision in the Parham case is expected sometime before June 1978.

II. CURRENT CASES

A. CLASSIFICATION

ILLINOIS: People of the State of Illinois v. Donald Lang, No. 76 Crim. 064 (Cir. Ct., Cook County, October 11, 1977).

Since the court's previous order in this case, the Department of Mental Health and Developmental Disabilities for the State of Illinois has failed to develop a plan that would incorporate an appropriate training program with a living arrangement providing adequate security for Donald Lang. The position of the Department of Mental Health and Developmental Disabilitie has been that it wishes to release Mr. Lang. But the court held that complete release of a person charged with murder without trial is not satisfactory in the face of society's right to be free from the threat of serious crime. Noting that the Department of Mental Health and Developmental Disabilities has a statutory charge in Illinois to "provide the highest possible quality of humane and rehabilitative care and treatment to all persons admitted or committed," the court ordered that a writ of mandamus be issued against the Director of the Department of Mental Health and Developmental Disabilities, commanding him to create and implement an adequate and humane care and treatment program for Donald Lang.

B. CONFIDENTIALITY/ACCESS TO RECORDS

ILLINOIS: Beavers v. Sielaff,* No. 71 C 417 (N.D. Ill., May 12, 1977).

A three-judge court of the United States District Court for the Northern District of Illinois has entered a consent decree which recognizes a constitutional right of access by minors, their attorneys, parents and guardians to minors' records maintained by the Illinois Department of Corrections.

The decree, entered on May 12, 1977, declares that all minors adjudicated delinquent and committed to the custody of the Illinois Department of Corrections, Juvenile Division, have a right of access, under the due process and equal protection clauses of the Fourteenth Amendment, to the contents of confidential records maintained by the Department of Corrections. The decree approves an administrative regulation to facilitate record access and prohibit any record access restriction inconsistent with the regulation. The court has retained jurisdiction to implement the order.

The new regulation allows records to be inspected by minors confined at institutional facilities. In addition, minors on parole or discharged from the Department's custody are permitted to obtain copies. Attorneys, parents and guardians are permitted to inspect and copy the records with the minor's consent.

Information contained in records may be deleted from records inspected and copied by parents, guardians and youths only if a clinician certifies that disclosure will result in specific harm to the individual seeking disclosure. Such exception does not apply to attorneys.

The records access regulation affects all personal records maintained by the Department of Corrections, including psychiatric evaluations and clinical data. However, youths, parents and guardians are permitted to inspect and copy specified "clinical" records only after a conference with program staff, at which staff explain the contents of such records.

Plaintiff filed her civil rights action in January 1975, claiming that she and all minors in the Department of Corrections' custody were deprived of their constitutional right to privacy and access to the courts. She sought a declaratory judgment voiding the provisions and an injunction prohibiting the policy. The three-judge panel was constituted on April 17, 1975. An order was entered on September 16, 1975 certifying that the action could be maintained by the class consisting of all minors adjudicated delinquent and committed to the custody of the Illinois Department of Corrections.

On August 4, 1976, after briefing and oral argument, the three-judge panel denied summary judgment and ordered discovery which was conducted until December 1976, when the parties resumed settlement negotiations.

The consent decree represents at least two major concessions by the Department: The Department abandoned its position that clinical records should not be disclosed to anyone including the minors because it would allow the minors to "thwart rehabilitative objectives," to "effect reprisals against clinicians," and result in unwarranted second-guessing of professional opinions by litigation hungry lawyers." The Department also agreed that an attorney need not obtain the consent of a parent or guardian or a court order to obtain access to a minor's records. Plaintiff's lawyers have filed a motion to assess attorneys' fees.

C. COMMITMENT

DISTRICT OF COLUMBIA: Poe v. Califano (Weinberger), No. 74-1800 (D.D.C., filed December 10, 1974).

The status of this case is basically unchanged. Cross-motions for summary judgment, pending for over two years, have not yet been decided. Counsel for plaintiff are currently conducting negotiations with HEW with a view towards settlement.

VERMONT: Frederick v. Mulcahy,* C.A. 76-257 (D. Vt., filed Dec. 16, 1976).

Named plaintiff in this class action suit, a former resident of Brandon Training School in Vermont, has brought suit in federal district court

challenging her conditional discharge status. She alleges that the state's failure to periodically review her status, while at the same time retaining legal supervision over her, violates her rights to due process of law and to be free from cruel and unusual punishment.

Plaintiff claims that, although she was conditionally released to a private family in 1969, is dangerous neither to herself nor others and is fully capable of caring for her personal needs, the state has maintained jurisdiction over her for over seven and a half years through her conditional release status, thus exposing her to a substantial risk that her conditional release would be revoked and that she would be recommitted to Brandon.

Plaintiff claims that the procedures to revoke a conditional discharge are unconstitutional, since there are no standards or criteria for revocation of a conditional discharge, no notice or hearing is provided prior to a revocation, and the state officials are under no legal duty to explore alternatives less restrictive than full-time hospitalization prior to any revocation of a conditional discharge status.

Plaintiff seeks declaratory and injunctive relief which would require state defendants to periodically review conditionally discharged individuals and to provide notice and a hearing to an individual facing revocation of a conditionally discharged status.

D. CRIMINAL LAW

CALIFORNIA: In re Newmann,* 4 Civ. 17404 (Cal. Ct. of Appeal, December 20, 1976).

Defendant in this case, who was found incompetent to stand trial because of mental retardation, was ordered by the Los Angeles Superior Court to be confined for a year, although no finding was made as to the likelihood of his regaining competence. Under both California Penal Code § 1370.1 and the ruling of the California Supreme Court in In re Davis, 8 Cal.3d 798, hearings must be held within 90 days, after a determination of incompetence to stand trial, to determine the likelihood that competence would be restored; and if there is no such likelihood, release or commitment under an alternative procedure should ensue. Defendant filed a habeas corpus petition in the Supreme Court, which was transferred to the Court of Appeal for hearing.

The Court of Appeal ruled that it is no more difficult to evaluate the likelihood of recovery of a defendant found incompetent to stand trial because of mental retardation than it is to evaluate those found incompetent because of other forms of disability. Rejecting the Attorney General's argument that the 90-day period should not apply because it is more difficult to evaluate mental retardation than other disabilities, the court noted that if it can be determined within 90 days that a

defendant is mentally retarded, is subject to commitment, or is subject to some other disposition, then "defendant's likelihood of recovery should also be ascertainable within the same period." Since it was found that defendant was not likely to regain his competence in the foreseeable future (in another habeas corpus proceeding in San Bernadino County), the court held that the criminal charges "could no longer provide a basis for petitioner's continued involuntary confinement." The petition for habeas corpus was, in the end, denied, and since conservatorship proceedings were under way in Los Angeles Superior Court, petitioner was placed in the custody of that court.

CALIFORNIA: O'Brien v. Superior Court,* 61 C.A.3d 62 (1976).

In this case, a number of persons involuntarily confined on mental retardation grounds had brought habeas corpus proceedings in which they sought to establish they had a right to jury trial. The gist of their claims was that because other committed persons had a right to jury trial under California law, it would violate the equal protection clause to deny such a right to mentally retarded persons. The California Court of Appeal ruled that an allegedly retarded person is entitled to a jury trial, upon request, in a proceeding to commit or recommit him to a state hospital. But the court declined to go further and rule that a right to jury trial exists in a habeas corpus proceeding brought by a committed person. The court reasoned that mentally retarded persons already have a statutory right in California to a jury trial at annual recommitment proceedings, and that the constitution does not require a jury trial during other habeas corpus challenges to commitment, for which there is no limit on frequency under the Health and Safety Code provisions of California law.

DISTRICT OF COLUMBIA: United States v. Jackson,* No. 76-1077 (D.C. Cir., December 21, 1976).

Defendant in this case was charged with first-degree burglary and rape, was found not guilty by reason of insanity and was indefinitely committed to St. Elizabeths Hospital, where he was diagnosed as mildly retarded and likely to injure himself and others if allowed to remain at liberty. Defendant could be released, under the provisions of the applicable D.C. statute, only when the superintendent of St. Elizabeths himself certifies that the individual has "recovered his sanity" and will not "in the reasonable future be dangerous to himself or others." Defendant petitioned the United States Court of Appeals for the District of Columbia for unconditional release, alleging that the D.C. statute deprived him of his constitutional rights to treatment, to be free from cruel and unusual punishment, and to the guarantee of equal protection of the laws.

In denying Jackson's motion for release, the court reasoned as follows:

(a) Mental retardation is a mental defect which will support an insanity defense. Although there are separate statutes covering civil commitment

of mentally ill and mentally retarded persons, Congress did not intend to interrelate the civil commitment scheme to criminal commitments. Rather, Congress intended "to insure that persons acquitted of a crime by reason of insanity are automatically committed for the protection of the public and their own protection and rehabilitation."

(b) As to the claim of denial of the right to treatment in an appropriate facility (i.e., a mental retardation facility rather than the maximum security facility for mentally ill criminals), the court found that the record indicated that there had been a bona fide effort to treat the defendant and that his condition had improved during his confinement at St. Elizabeths to the point where he had been on weekend conditional releases for three years.

(c) As to the cruel and unusual punishment defense, the court noted that the elements of indefinite confinement and lack of treatment must be shown in order to sustain such a claim. Having found that the defendant was receiving treatment, the court found no Eighth Amendment violation.

(d) As to defendant's claim of denial of equal protection of the laws, the court refused to recognize his allegation that there was no compelling state interest which justified his being treated differently from other mentally retarded individuals who were committed to a mental retardation facility. The court stated that the statute in question "must be upheld if there is a rational basis for the scheme it creates," and that the purposes of the statute, which included protecting society as well as delivering treatment for the defendant, provided a "rational basis for treating defendants acquitted by reason of insanity differently from other persons."

LOUISIANA: Louisiana v. Bennett,* No. 58,536 (La. Sup. Ct., filed April 4, 1977).

This appeal to the Louisiana Supreme Court challenged, inter alia, the adequacy of the state's sanity hearing procedures to determine the competency of a mentally retarded defendant. The Louisiana Supreme Court granted a rehearing to allow for a re-evaluation by the trial court of its determination that the defendant mentally retarded person was competent to stand trial. Having reviewed the record, the Supreme Court decided that the trial court had failed to apply the appropriate standard in assessing defendant's capacity. The court further held that the trial court erred in not ordering additional testing, including clinical evaluation. The court stated that when the defendant is indigent and forced to rely upon the findings of a sanity commission appointed by the court, he has the right to demand that the examination be thorough.

A second issue which had been raised on appeal was that it would violate the Eighth Amendment to imprison a mentally retarded person at hard labor. The Louisiana Supreme Court did not reach this latter issue because of its remand on the first issue.

E. EDUCATION

ARIZONA: Eaton v. State of Arizona, Civil No. 329028 (Superior Court of Maricopa County, Arizona, filed December 10, 1975).

Motions to intervene by additional members of the plaintiff class were denied. Defendants' motions to decertify the class are pending.

CALIFORNIA: California Association for Retarded Citizens v. Riles,* No. C77-0341 (N.D. Cal., filed February 15, 1977).

California Association for Retarded Citizens and several named plaintiff handicapped students have filed a statewide class action suit alleging that the California public school system has been illegally segregating handicapped children into special schools and classrooms and has failed to provide supplementary aid and services to handicapped children who do attend regular classes with nonhandicapped children. Under the current system, the complaint claims, handicapped school children are forced to accept inferior-quality education, diminished lifetime educational and employment opportunities and are psychologically stigmatized.

Plaintiffs seek declaratory and injunctive relief, alleging violation of rights assured under the Education of All Handicapped Children Act, Section 504 of the Rehabilitation Act of 1973, the California Education Code and the United States and California Constitutions.

CALIFORNIA: Crowder v. Riles,* No. CA 000384 (Super. Ct., Los Angeles County, December 20, 1976).

This class action lawsuit seeks appropriate free public education for all California school-age mentally retarded, physically handicapped, educationally handicapped, or multiply handicapped children; or, in the alternative, where appropriate public school programs are not available, the action seeks payment for appropriate private school programs for such children. The complaint seeks declaratory and injunctive relief, claiming violations of the equal protection and due process provisions of the United States and California Constitutions; Section 504 of the Rehabilitation Act of 1973 (which forbids discrimination against handicapped persons by recipients of federal financial assistance); and Section 6871 of the California Education Code.

Under the California statute, funds are to be made available to the parents of a handicapped child to reimburse the cost of sending the child to a private, nonsectarian school when an appropriate public school program is not available and cannot reasonably be provided. The complaint alleges that none of the named plaintiffs is receiving appropriate public school education. Since the funds available under § 6871 are inadequate to cover the full costs of sending a child to a private school, parents of plaintiff handicapped children must pay the amount not covered by § 6871, take their children out of school altogether or accept placement of their children in inappropriate educational programs.

CONNECTICUT: Connecticut Association for Retarded Citizens v. State Board of Education,* Civ. No. H77-122 (D. Conn., filed March 10, 1977).

Plaintiffs in this class action right to education suit are the Connecticut Association for Retarded Citizens and seven named plaintiffs -- all severely or profoundly mentally retarded children with varying degrees of other disabilities, and all of whom have been excluded from the public school system. Plaintiffs seek declaratory and injunctive relief, alleging that state educational practices and procedures violate rights secured under Section 504 of the Rehabilitation Act of 1973, the equal protection and due process clauses of the 14th Amendment to the United States Constitution, the Education of All Handicapped Children Act and Section 10-76a(f) of the Connecticut General Statues.

The challenged Connecticut statute excludes from the statutory definition of mentally retarded those mentally retarded children requiring custodial care or without clean bodily habits, responsiveness to directions, or means of intelligible communication. Consequently, such children are denied access to the special education procedures. These children, plaintiffs allege, are in need of and able to profit from an education, but have been deprived by defendants of all opportunity for a program of public education. Such a denial, according to the plaintiffs, violates rights secured to them under the Education of All Handicapped Children Act, which mandates that a state receiving federal monies under the Act must provide an appropriate education to all children regardless of the severity of their handicap.

MASSACHUSETTS: Allen v. McDonough,* Civil No. 14948 (Superior Ct., Mass., April 13, 1977)

Earlier in this action the Massachusetts Superior Court had required defendant officials to comply with the Massachusetts Special Education Law (Chapter 766). On April 13, 1977, the Superior Court found the Boston School Committee and the Superintendent to be in civil contempt for their disobedience to its compliance orders. In hearings subsequent to the finding of contempt, the court has ordered compensatory services to the children denied court-ordered entitlements in the form of an optional summer school program and a detailed plan for compliance for the 1977-78 school year. Under advisement are the specifics of compensatory services not furnished during the summer and the amount of attorneys' fees.

MISSISSIPPI: Mattie T. v. Holladay, Civil No. DC 75-31-S (N.D. Miss., July 28, 1977).

On July 28, 1977, Judge Orma R. Smith of the United States District Court for the Northern District of Mississippi granted plaintiff handicapped children's motion for summary judgment against officials of the Mississippi Department of Education. Judge Smith held that defendants

had violated plaintiffs' rights under the Education of All Handicapped Children Act, 20 U.S.C. §§ 1401 et seq. On the same day, Judge Smith also granted plaintiffs' motions for summary judgment against officials from two local school districts, holding that they had violated plaintiffs' rights under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794.

Specifically, as to the state education officials, the court held they violated plaintiffs' rights under the Education of the Handicapped Act (EHA) by failing to adopt sufficient policies and procedures to ensure plaintiffs:

(a) procedural safeguards, including prior notice and an impartial due process hearing, to challenge decisions regarding their educational evaluation and placement, pursuant to 20 U.S.C. § 1413(a)(13)(A) (Supp. IV, 1974);

(b) a program to locate and identify all handicapped children in the state in need of special education services, pursuant to 20 U.S.C. § 1413(b)(1)(A) (Supp. IV, 1974):

(c) racially and culturally nondiscriminatory tests and procedures used to classify them as handicapped and place them in special education programs, pursuant to 20 U.S.C. § 1413(a)(13)(C) (Supp. IV, 1974); and

(d) educational programs which are in normal school settings with non-handicapped children to the maximum extent appropriate, pursuant to 20 U.S.C. § 1413 (a)(13)(B) (Supp. IV, 1974).

As to the local school district defendants, the court held they violated plaintiffs' rights under Section 504 of the Rehabilitation Act of 1973 "by failing to provide necessary educational services." The court ordered that defendants

> "...within 20 days of the date of this order...shall thoroughly and individually test and evaluate plaintiffs...to determine each child's educational needs and within 30 days of the completion of each child's respective evaluation, provide each child with educational services appropriate to his or her needs."

The court further ordered defendants to submit a report to the court and plaintiffs' counsel upon plaintiffs' placement. The court temporarily deferred ordering relief as to plaintiffs' class and retained jurisdiction of the case.

According to plaintiffs' attorney, these decisions are significant for a number of reasons. First, the Education of All Handicapped Children Act ruling is the first under that Act, and it establishes not only that an individual has a federal cause of action under the Act, but also that

state departments of education have the responsibility to adopt policies, monitor local school districts and effectively enforce compliance with the Act's requirements.

Second, the Section 504 rulings establish that handicapped children have a right to appropriate educational services immediately under Section 504, regardless of any implications to the contrary in the new Section 504 regulations, 45 C.F.R. Part 84 (42 Fed. Reg. 22676 et seq., May 4, 1977). Both sides fully briefed 45 C.F.R. § 84.33(d), and the court implicitly rejected defendants' arguments that this section allowed a delay in fully implementing Section 504. This ruling requiring full services immediately for all plaintiffs is especially significant since not all plaintiffs were totally excluded from all educational services. Some had been placed in regular programs in which they received no special services, and others had been placed in inadequate special classes. Yet all must now receive appropriate educational programs.

NEW JERSEY: New Jersey Association for Retarded Citizens v. New Jersey Department of Human Services,* No. C2473-76 (Superior Ct., Hunterdon County - Chancery Div., filed March 14, 1977).

This class action suit, filed on behalf of a 13-year-old resident of Hunterdon State School and all other present and future residents of the institution, challenges the adequacy of education and training programs at Hunterdon, the newest state institution for the mentally retarded in New Jersey. Calling these programs "grossly inadequate," plaintiffs claim that by failing to provide special education and training programs designed to meet residents' individual needs, defendants have violated the residents' statutory and constitutional rights under the Developmentally Disabled Assistance and Bill of Rights Act, Section 504 of the Rehabilitation Act of 1973, the Education of All Handicapped Children Act, the United States Constitution and the New Jersey Constitution and statutes. They seek declaratory and injunctive relief, including appointment of a special master to supervise compliance.

More specifically, the complaint alleges that at least 200 of the 450 Hunterdon residents between the ages of 5 and 20 are receiving no education or training at all. Many others allegedly receive fewer than three hours a week of educational programming. Even existing skills, plaintiffs claim, are not prevented from deteriorating, nor are residents evaluated to determine whether appropriate education and training programs could be carried out in nonresidential day training programs or other more normal, less restrictive settings than the Hunterdon School.

NORTH CAROLINA: North Carolina Association for Retarded Children, et al. v. State of North Carolina, et al., Civil No. 3050 (E.D.N.C., filed May 18, 1972).

Negotiations between the parties are continuing.

TENNESSEE: Rainey v. Tennessee Department of Education, No. A-3100 (Ct. of Appeals, Davidson Cty., filed November 1973).

The injunction against the expenditure of funds for the public school system in Tennessee was appealed by the defendants and was argued before the Tennessee Court of Appeals on September 13, 1977.

On October 21, 1977, plaintiffs filed a "Petition for Contempt of Court and Further Relief - October, 1977" in the Chancery Court of Davidson County, seeking to secure relief to members of the plaintiff class who are being denied rights secured by previous orders in the case. In particular, they seek special education services for deinstitutionalized children in a location which will not require a new foster home placement unless the change is absolutely necessary. Defendants have cross-filed a motion to dismiss. A hearing was scheduled for November 28, 1977.

F. EMPLOYMENT

NEW JERSEY: Schindenwolf, et al. v. Klein, et al., Civil No. L-41293-75 PW (Superior Ct., N.J., filed June 25, 1976).

The appellate court has dismissed plaintiffs' appeal as improvidently granted, finding the issue premature and not ripe for decision. It held that if it should be decided that the institutions are not legally bound to reinstate work programs, the issue would become moot.

Plaintiffs have filed a trial brief in the lower court arguing that termination of patient work programs in New Jersey institutions violates (1) their constitutional rights to treatment, equal protection and procedural due process; (2) Section 504 of the Rehabilitation Act of 1973; and (3) the doctrine of the least restrictive alternative because of the current environment in which they live.

A trial date has not yet been set.

G. GUARDIANSHIP

ILLINOIS: Rud v. Dahl,* No. 77 C 2361 (N.D. Ill., Sept. 7, 1977).

Plaintiffs in this class action are all individuals who have been or will be adjudicated incompetent and incapable of managing their person and estate, and who have been or will have a conservator appointed in Cook County on or after June 17, 1976. Defendants are two probate judges and two clerks of the probate court in Cook County, Illinois.

The action seeks injunctive and declaratory relief, challenging the Illinois statutory provisions regarding adjudication of incompetency and

appointment of conservators in Cook County, in that the provisions "allow for an adjudication of incompetency, with the accompanying loss of civil rights, to be performed without constitutionally adequate notice, without the presence of the alleged incompetent, and without counsel on behalf of the alleged incompetent or an appropriate waiver of such counsel."

In September the federal district court dismissed the case on judicial immunity and abstention grounds. The case has been appealed to the Court of Appeals for the Seventh Circuit and briefs for the parties and amicus Gray Panthers have been filed. The case is scheduled to be argued in February or March 1978.

MICHIGAN: Schultz v. Borradaile, Civil No. 74-40123 (E.D. Mich., filed October 25, 1974).

The three-judge court has held two hearings on this case, although it has yet to issue any rulings. The first hearing, held in May, centered primarily on questions of abstention and standing, while the second hearing, held in November, centered on the constitutional questions. The case remains under advisement by the three-judge court.

MICHIGAN: Todd and Baldridge v. Smith,* No. 74-40123 (E.D. Mich., January 21, 1977).

This case was consolidated with Schultz v. Borradaile (see write-up of Schultz above).

PENNSYLVANIA: Holtzer v. Mathews,* No. 76-2193 (ed Cir., May 6, 1977).

This was an action in which a husband and wife, both of whom claimed to be mentally retarded and who were receiving SSI, challenged the appointment of the wife's mother as representative payee of their benefits without notice to them. The plaintiffs sought to compel the Secretary of HEW to provide a due process hearing for Social Security disability recipients prior to designating other individuals as the representative payee. Because the wife's mother was found not qualified and social agencies were still being contacted to ascertain whether they would function as payees, the district court ruled that it had no jurisdiction to entertain the case because plaintiffs had not exhausted their administrative remedies. Plaintiffs appealed, and on May 6, 1977, the Third Circuit affirmed the district court's ruling and dismissed the appeal for mootness.

PENNSYLVANIA: Vecchione v. Wohlgemuth, 377 F. Supp. 1361 (E.D. Pa. 1974), 426 F. Sup. 1297 (E.D. Pa. 1976), 558 F.2d 150 (3d Cir. 1977).

In July 1974, a three-judge court declared P. Stat. Ann. Tit 50, § 4424 and 4501 unconstitutional because they authorized summary appropriation

and control of patients' funds by the Commonwealth in violation of the due process and equal protection clauses. The court ordered defendants to return such monies to the patients. When the Commonwealth continued to withhold moneys in violation of the order, plaintiff and a plaintiff-intervenor filed a motion for contempt. Subsequently, a second order was entered with the consent of all counsel in April 1975, whereby $9 million of illegally withheld funds were to be turned over to plaintiffs.

Although they had agreed to the implementation order, defendants again failed to comply. In February 1976 defendants filed a motion to vacate and/or modify the consent decree, alleging, inter alia, that the original three-judge court lacked subject-matter jurisdiction when it decided the case; that the $9 million payback was barred by the Eleventh Amendment; that defendants' counsel were not authorized to consent to the decree; and that it was impossible for defendants to comply.

The three-judge court unanimously denied defendants' motion in October 1976. Defendants appealed this decision, and on June 14, 1977, the Third Circuit Court of Appeals affirmed the lower court's denial of the motion to vacate.

H. PROTECTION FROM HARM

MICHIGAN: Karolak v. Dempsey,* No. 77-18 (Mich. Ct. of Appeals, filed January 4, 1977).

Plaintiffs in this lawsuit are parents of mentally retarded minor residents of Plymouth Center for Human Development, Northville, Michigan, and the Plymouth Association for Retarded Citizens. Defendants are the Director of the Michigan Department of Social Services and the Director of the Children's Protective Services. The suit seeks a writ of mandamus directing defendants to fulfill their legal duty to take action to prevent further alleged abuse and neglect of the children at Plymouth Center.

NEW YORK: New York State Association for Retarded Children v. Carey [Willowbrook], 393 F. Supp. 714 (E.D.N.Y. 1975), 357 F. Supp. 752 (E.D.N.Y. 1973).

In the spring, plaintiffs became increasingly concerned that transfers of Willowbrook residents to the Bronx Developmental Center would impede residents' progress toward more normal community placements. On June 10, 1977, following a two-day trial, the court agreed with recommendations of the Willowbrook Review Panel and with plaintiffs that such transfers "would delay [residents'] placement in the community and thus frustrate one of the chief purposes of the consent judgment....The goals of normalization and development of the mentally retarded cannot be met until every effort is made to physically and socially integrate the class members into the mainstream of the community."

Plaintiffs have also filed a motion asking the court to declare the defendants liable for attorneys' fees and to order the parties to negotiate a reasonable amount.

In a related action, the Civil Service Employees Association of New York has sought to challenge the contract between Willowbrook and United Cerebral Palsy (UCP) of New York under which UCP now operates seven of the Willowbrook buildings. The association appears to be challenging the underlying assumption that a state can subcontract delivery of mental retardation services, rather than delivering them itself. Specifically, the association is arguing that the contract with UCP constitutes a violation of state civil service laws. The association filed a suit in state court to block the contract, but this matter has now been referred to the district court and consolidated with other Willowbrook case issues.

PENNSYLVANIA: Romeo v. Youngberg, Civil No. 76-3429 (E.D. Pa., filed November, 1976).

In an order of June 6, 1977, the federal district court denied defendants' motion to dismiss the complaint, based on the constitutional right to protection from harm, but granted their motion to dismiss to the extent that it seeks damages from defendants in their official capacities (Eleventh Amendment).

In November 1977, plaintiff filed a motion to amend the complaint, alleging additional deprivations of constitutional rights; that motion is still pending. Discovery is proceeding, and a trial is scheduled for February 1978.

I. STERILIZATION

DISTRICT OF COLUMBIA: Relf v. Weinberger; National Welfare Rights Organization, et al. v. Weinberger, et al., 372 F. Supp. 1196 (D.D.C. 1974), 403 F. Supp. 1235 (D.D.C. 1975).

In September 1977, the Court of Appeals for the District of Columbia held the case moot and remanded it to the District Court with instructions to dismiss the complaint.

INDIANA: Stump v. Sparkman (formerly Sparkman v. McFarlin), No. 76-1706 (7th Cir., March 23, 1977), cert. granted, No. 76-1750, 46 USLW 3185 (Oct. 3, 1977).

Certiorari in this case was granted by the Supreme Court on October 3, 1977. Briefs have been filed before the Supreme Court, and argument and a decision are expected before the summer.

J. TREATMENT

ALABAMA Wyatt v. Hardin [Stickney], 344 F. Supp. 373, 378 (M.D. Ala. 1972) (subsequent citations omitted).

Amici organizations in this case moved the court in February for further relief to implement the court's order of 1972 regarding institutionalized mentally retarded persons, alleging substantial noncompliance with that order. Defendants then filed a motion to dismiss amici's motion for further relief and submitted to the court voluminous documents in support thereof. In their response to defendants' cross-motion, amici organizations specify five areas of noncompliance by defendants: (1) provision of sufficient habilitation programming at Partlow State School and Hospital; (2) provision of educational services to school-age residents; (3) professional staffing; (4) improvements to the physical plant to assure privacy and alleviate overcrowding; and (5) habilitation in less restrictive, community-based settings. Amici also request the court to appoint a special master to oversee implementation of court-ordered relief.

DISTRICT OF COLUMBIA: Dixon v. Weinberger, 405 F. Supp. 794 (D.D.C. 1975).

On November 11, 1977, lawyers for plaintiffs met with representatives of the District of Columbia government and HEW to be briefed on the defendants' efforts to implement the court's decree in this case. Although the court has never ruled on the outlines for a plan to provide community-based treatment in appropriate settings for St. Elizabeths patients suitable for such treatment, representatives of HEW Secretary Califano reported that an intense effort to outplace such patients is presently under way and agreed to share with plaintiffs' lawyers the reports of several task forces working on different aspects of the problem. Plaintiffs are in the process of receiving and reviewing these materials, and will then decide if further legal action is necessary.

DISTRICT OF COLUMBIA: Evans and the United States v. Washington, Civil No. 76-0693 (D.D.C., filed Jaunary 23, 1976).

On January 2, 1977, the court granted the motion of the United States to change its status from amicus curiae to plaintiff-intervenor. Discovery is continuing.

FLORIDA: Donaldson v. O'Connor, 422 U.S. 563 (1975).

On May 6, 1977, the federal district court ruled that plaintiff's lawyers were entitled to reasonable attorneys' fees under the 1976 Civil Rights Attorney's Fees Act. On August 11, 1977, the court reaffirmed that entitlement in denying defendants' petitions for reconsideration. The court gave the parties until September 30 to negotiate the amount of fees. These negotiations broke down because of

disputes on four specific questions relevant to the determination of reasonable fees. Upon a request by the parties, the court has given the parties until January 20, 1978, to submit simultaneous briefs on the following legal issues relating to the application of the Civil Rights Attorney's Fees Awards Act of 1976 to this case:

(a) Are attorneys' fees limited to an amount not to exceed the amount paid to plaintiff in settlement of plaintiff's claim for damages?

(b) Is the award of attorneys' fees limited to compensation for work related to the precise issue or issues resolved in plaintiff's favor or may plaintiff recover attorneys' fees for all work reasonably related to the litigation of his case?

(c) Is an attorney's reasonable hourly rate limited to the customary hourly rate for attorneys in the geographic area where suit was filed and venue lies or may the reasonable hourly rate be based upon the customary hourly rate in the area where the attorney primarily practices?

(d) Is the hourly rate at which fees would otherwise be computed limited to the hourly rate in salary or similar compensation paid to plaintiff's attorney by a nonprofit corporation during the conduct of the litigation?

A hearing on the above issues is scheduled for February 1, 1978.

KENTUCKY: Kentucky Association for Retarded Citizens v. Conn,* No. C-77-0048 (W.D. Ky., filed June 2, 1977).

Plaintiffs in this class action are the Kentucky Association for Retarded Citizens and six other plaintiffs. Defendants include the Kentucky Departments of Human Resources, Health Services, Social Services, Mental Health and Mental Retardation Services, Finance and Administration, and Excepticon, Inc., a private profit-making corporation which, under a service-management contract with the state, operates Outwood, a 300-bed intermediate care facility for the mentally retarded in rural Kentucky. Plaintiffs seek declaratory and injunctive relief for violations of the constitutional, federal and state statutory rights of the residents of Outwood to adequate care and treatment in the least restrictive setting. Specifically, plaintiffs seek to prohibit further admissions to Outwood and to prohibit the state from constructing a new and larger facility to replace Outwood, which would be located in an equally isolated area, rather than developing a comprehensive and effective plan for community-based placements and programming.

Statutory claims in the suit include violations of the Rehabilitation Act of 1973, the Developmental Disabled Assistance and Bill of Rights

Act, the Medicaid provisions of the Social Security Act, the Kentucky Mental Retardation Hospitalization Act, and the Kentucky State and Regional Mental Health Programs Act.

LOUISIANA: Gary W. v. State of Louisiana, et al., Civil No. 74-2414 (E.D. La., July 26, 1976).

By order of February 3, 1977, the court awarded attorneys' fees to plaintiffs' attorneys, but defendants refused to pay this award, claiming that a state constitutional provision prohibited them from doing so without a specific legislative appropriation. The legislature voted 48 to 47 not to pay the attorneys' fees in this case and the state refused to do so out of departmental funds. This issue was litigated in September, and the court issued an order on October 26, 1977, requiring the state to pay the plaintiffs the previously awarded attorneys' fees.

MAINE: Wouri v. Zitnay [Rosser], No. 75-80-SD (S.D. Maine, filed August 22, 1975).

Plaintiffs and defendants are still in a long and intensive process of negotiating a decree setting standards for the habilitation of class members both in and out of the institution.

MARYLAND: Bauer v. Mandel, No. 22-871 (Anne Arundel County Circuit Ct., filed September 1975).

Defendants' motion to dismiss, which was filed in 1976, has been heard, but the court has still not ruled on the motion. Argument on defendants' motion to compel production of documents and motion for leave to file more than 30 interrogatories has also been heard, but again the court has not ruled on these motions.

MARYLAND: United States v. Solomon, et al., 419 F. Supp. 358 (D. Md. 1976), appeal docketed, No. 76-2185 (4th Cir., October 21, 1976).

On October 12, 1977, the Fourth Circuit Court of Appeals upheld the district court opinion that the Attorney General, without specific statutory authority, lacks the right to bring suit on behalf of institutionalized persons to redress alleged deprivations of constitutional rights.

MASSACUHSETTS: Brewster v. Dukakis,* No. 76-4423-F (D. Mass., filed March 15, 1977).

In this class action involuntarily confined residents of the Northampton State Hospital challenge the state's failure to create a comprehensive system of less restrictive alternatives to hospitalization. The action is based on the First, Eighth, Ninth and Fourteenth Amendments to the

United States Constitution, the Developmental Disabled Assistance and Bill of Rights Act, 42 U.S.C. § 6001 et seq., the Rehabilitation Act, 29 U.S.C. § 701 et seq., and Mass. Gen. Laws cc. 19 and 23.

According to the complaint, more than 100 of the 500 persons confined at Northampton State Hospital are mentally retarded. From a budget of over $11 million for mental health services in the area served by the Hospital, almost $10 million is allocated to maintaining the institution, resulting in a virtual absence of community programs and thereby causing prolonged and unnecessary confinement in the Hospital for persons who might otherwise be released to community programs.

MINNESOTA: Welsch v. Dirkswager [Likins], 373 F. Supp. 487 (D. Minn. 1974), ___ F.2d ___ (8th Cir., March 7, 1977).

A proposed consent decree has been prepared by the parties and a hearing was scheduled before the district court on December 28, 1977.

The proposed consent decree incorporates requirements of earlier orders issued in October 1974 and April 1976, as well as new provisions. It limits admission of persons to Cambridge State Hospital to those with severe problems for whom community facilities are unavailable. Discharge of residents is both encouraged and restricted. The residents must be actively trained for discharge to community facilities, but, on the other hand, discharges are limited by requirements for adequate care in the community facility.

The proposed decree details upgrading in the physical plant at Cambridge and requires specific increases in staffing levels and outlines the staff's responsibilities for upgrading programs and services. Although the proposed consent decree applies only to Cambridge State Hospital, it would require the Commissioner of Public Welfare to ask the Governor's approval of the funding request for similar staffing levels in other state institutions.

The provisions of the previous order of April 1976 regarding the use of major tranquilizers are expanded in the proposed decree. Cambridge staff must establish an effective system for objective evaluation of the use of major tranquilizers. Performance of drugs will be monitored by experts in the field.

Finally, the proposed decree provides for appointment of a person to monitor implementation of the various provisions. This monitor would be authorized to retain consultants to assist in the process of evaluating conditions at Cambridge. The decree would also provide for continuing jurisdiction of the court over implementation of the decree.

MISSOURI: Caswell v. Califano,* No. 77-0488 CV-W-4 (W.D. Mo., filed June 30, 1977).

Plaintiffs in this case are mentally retarded and mentally ill persons at St. Joseph's State Hospital in Missouri who are in need of a less

restrictive placement for their effective treatment and habilitation. Defendants are the Secretary of HEW and state mental health officials.

The action challenges the state defendants' quota system which allows the Department of Mental Health to fund only five new placements into the community per month out of a population of 620 people institutionalized at the Hospital. In addition to constitutional rights violations, plaintiffs allege that state defendants have violated the Developmentally Disabled Assistance and Bill of Rights Act, the Rehabilitation Act of 1973, Titles XIX and XX of the Social Security Act, the Special Health Revenue Sharing Act, the Community Mental Health Center Amendments of 1975 and that federal defendants have failed to ensure that the state is in compliance with provisions of those federal statutes.

State defendants have filed a motion to dismiss, alleging a failure to state a cause of action or to state the requisite elements of a class action, and the plaintiffs have responded.

MONTANA: United States v. Mattson, Civil No. 74-1-138-BU (D. Mont., September 29, 1976), appeal docketed, No. 76-3568 (9th Cir., December 3, 1976).

Oral argument has not yet been scheduled before the Ninth Circuit Court of Appeals.

NEBRASKA: Horacek, et al. v. Exon, et al., Civil No. 72-L-290, 357 F. Supp. 71 (D. Neb. 1973).

A consent decree was entered in this suit on October 31, 1975. Alleging that the defendants have failed to provide plaintiff class with adequate individualized care and habilitation, protection from harm, affirmative programming and other specifics mandated by the consent decree, plaintiffs and plaintiff-intervenor, the United States Department of Justice, have requested additional relief and enforcement of the consent order from the district court. Plaintiffs and plaintiff-intervenor also seek to have a special master appointed to oversee implementation of the decree. A two-week hearing on this request was scheduled for December 5, 1977.

NEW JERSEY: In re C.S.,* Docket No. NHCC 11-75 (Hunterdon County, N.J., April 18, 1977)..

Plaintiff in this suit is a mentally retarded person currently residing at New Jersey Neuropsychiatric Institute; defendant is the New Jersey Commissioner of Human Services.

Judgment was entered in this case on April 18, 1977, and appears to be the first judicial pronouncement on treatment rights of the mentally retarded in New Jersey. The Commissioner was ordered to develop a

detailed plan to provide C.S. "adequate habilitative and rehabilitative care...to allow him to develop his potential and acquire and maintain life skills which will enable him to care for himself and to cope more effectively with his environment...." The court found that the staffing and facilities of the institution were "substandard by any standard" and ordered that resources used to implement the plan for C.S. (which was to be filed within 90 days) not be in diminution of services provided other residents of facilities operated by the New Jersey Department of Human Services.

Finally, the court denied plaintiff's request for regular and periodic judicial review of his confinement, a right afforded other residents of psychiatric institutes in New Jersey.

The state has appealed that portion of the judgment requiring preparation and submission of the detailed plan, and plaintiff has cross-appealed that portion denying periodic judical review of C.S.'s confinement.

NEW YORK: New York State Association for Retarded Citizens, Inc. v. Carey [Wassaic], 76 Civ. 2860 (S.D.N.Y., filed November 23, 1976).

On November 9, 1977, plaintiffs and defendants filed a stipulation of voluntary dismissal pursuant to F.R.C.P. 41(a)(1). The settlement calls for creation of an operational plan for Wassaic Developmental Center to establish quality facilities and services for the residents in accordance with their needs. It also provides that plaintiffs' experts will have ongoing input into the creation of the plan, and that continuous monitoring of the plan's implementation will be provided by Protection and Advocacy System for Developmental Disabilities, Inc., the state-wide P&A network established under the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. § 6000.

OHIO: Barbara C., et al. v. Moritz, et al.,* No. C 2-77-887 (S.D. Ohio, filed November 17, 1977).

This basic right to habilitation/less restrictive alternative class action was filed in November on behalf of mentally retarded individuals, three of whom are residents of Orient State Institute and one who is a former resident now on "trial visit status." Defendants include the Director of the Ohio Department of Mental Health and Mental Retardation; the Commissioner of the Divison of Mental Retardation and Developmental Disabilities; the Superintendent of Orient State Institute; the Administrator and members of the Rehabilitation Services Commission of Ohio; the Superintendent of Public Instruction; and members of the State Board of Education. Defendants have yet to respond co the Complaint.

OHIO: Bettencourt v. Rhodes,* No. C77-12 (N.D. Ohio, Sept. 13, 1977).

One of two named plaintiff in this case was a minor who was substantially mentally disabled by Downs Syndrome and a visual handicap. He was

admitted to Columbus State Institute (CSI) in Ohio on a voluntary basis due to his mother's inability to care for him at home and her desire that he receive intensive habilitation that might allow him to return home. His family was prevented from having continuing or frequent contact with him because CSI is located some 150 miles from the Toledo metropolitan area.

The mothers of both plaintiffs attempted unsuccessfully to find appropriate residential placements for their sons within the Toledo area, but no placements were available there, necessitating plaintiffs' continued confinement at CSI. In their complaint, plaintiffs alleged that this situation violated their constitutional right to habilitation in the least restrictive setting which necessarily includes community placements.

The state defendants moved to dismiss the complaint on a number of grounds, including the grounds that the Tenth and Eleventh Amendments deprive the federal courts of power to compel defendants to construct local residential facilities for the mentally retarded and that federal courts have no authority to compel geographic dispersal of mental health services, because the economic and medical factors involved lie within the sole expertise of the state. Defendants urged further that the issue of least restrictive alternative presents a constitutional claim regarding only the right to liberty, not the right to treatment.

On September 13, the federal district court granted defendants' motion to dismiss the amended complaint. According to the court's analysis, it was material that plaintiffs did not allege that their original commitments to CSI were invalid and that plaintiffs did not seek placement in a facility that would provide services less comprehensive than full-time residential hospital care. According to the court, the central issue was "whether the adverse effects of locale on a patient's family visitation and access to community habilitation programs deprives an institutionalized retarded person of his constitutional right to treatment." After reviewing plaintiff's reasoning that the hardship of traveling 300 miles round-trip caused the plaintiff's family and friends to visit him less frequently than would be the case if he resided in a local residential mental health facility and that fewer visits by family and friends caused regression, the court held that:

> "Plaintiffs' logic is flawed. To say that a thing is harmful and therefore is not treatment is not to say that to receive treatment everything harmful must be eliminated. It is true that to afford maximum benefits of treatment all impediments to treatment must be removed--a desirable goal. The Constitution imposes no duty upon a state to provide social services to its citizens. Nor does the Constitution require a state to choose between providing maximum services or no services. See Dandridge v. Williams, 497 U.S. 471 (1970). The Constitution requires only that when a state

voluntarily undertakes to confine mentally retarded persons, it is obligated to provide them with reasonable medical treatment. The Court does not doubt that the institutional environment of a retarded person has a positive or negative therapeutic effect. Local community habilitation programs may form part of this environment, but this is not to say that local habilitation programs are the only programs that have therapeutic value. The same is true of visitation. Defendants have taken no affirmative action to deny a plaintiff's family and friends the right to visit him. The fact that CSI is so situated that visitors from Lucas County must travel 150 miles may discourage visitors, but by no means imposes an insurmountable barrier to visitation.

"The Court finds that the doctrine of least restrictive environment has no application here. That doctrine applies to the immediate physical setting imposed upon the patient, i.e., restrictons on his physical freedom."

The court also made short shrift of plaintiffs' alternative claims that defendants' practice of confining retarded persons in an institution 150 miles from the patients' familial residence violated § 794 of the Rehabilitation Act of 1973. Plaintiffs reasoned that such confinement deprived them of their statutory right to an appropriate education in view of defendants' failure to provide an appropriate educational program at CSI and because it prevented them from participating in federally funded community habilitation programs solely by reason of their handicap. According to the court, "These arguments cannot apply to persons (such as plaintiffs) voluntarily committed to CSI because these patients have elected to forego the benefits of community programs in exchange for the benefits afforded them at CSI. Voluntary patients at CSI always have the option of leaving the institution....Furthermore, within the meaning of the statute, plaintiffs are not excluded from participating in local community programs solely by reason of their handicaps; they are excluded because the severity of their handicaps requires confinement and care of a type that is available only at a distant institution."

Plaintiffs' third cause of action was that defendants' failure to provide a community-based residential hospital facility violated 42 U.S.C. § 1610, an introductory section of the Developmentally Disabled Assistance and Bill of Rights Act which begins, "Congress makes the following findings respecting the rights of persons with developmental disabilities." According to the court, this section is a statement of the quality of services that federal and state governments should provide. "[I]t imposes no mandatory duties upon states...Plaintiffs point to no federal regulation that requires federally funded states to build residential facilities in any particular geographical location as part of a treatment program or otherwise."

Plaintiffs' fourth and final cause of action -- that defendants' failure to provide residential hospital facilities in the Toledo metropolitan area violated ch. 5123 of the Ohio Revised Code -- was dismissed by the federal court. Because the court found no merit in plaintiffs' federal claims, it exercised its discretion and declined to review plaintiffs' state claims.

OHIO: Ohio Association for Retarded Citizens v. Moritz, No. C2-76-398 (S.D. Ohio, April 19, 1977).

A consent order for a preliminary injunction was entered in this case on April 19, 1977. The order requires defendants to make comprehensive evaluations of the three named plaintiffs and at least 300 residents/ patients of the State of Ohio Department of Mental Health and Mental Retardation facilities who are mentally retarded and need mental health services. Along with other actions, defendants have ageeed to establish at least six special units in existing state facilities throughout Ohio to provide mental health and mental retardation services to persons determined, pursuant to the evaluations, to need such special services.

OHIO: In the Matter of Deborah P.,* No. 76-26504 Common Pleas Court (Probate Division, Pickaway County, Ohio, April 6, 1977).

In an order believed to be unprecedented in Ohio, a probate court ordered state, regional and local mental retardation offices to plan and develop a community residential facility appropriate to the needs of a mentally retarded involuntarily committed individual.

Deborah P. was initially involuntarily committed to an Ohio state mental retardation facility in December 1975. In a subsequent recommitment hearing, the probate court determined from the evidence introduced that community placement was appropriate for Deborah. Under the Ohio mental retardation commitment statutes, mentally retarded persons subject to institutionalization by court order must be habilitated in the least restrictive environment; thus, Deborah P., being institutionalized, was not being habilitated in the least restrictive environment.

In January 1977, the probate court transferred custody of Deborah P. to the board of mental retardation of the county in which she had resided prior to her initial commitment. The court ordered the county board to find suitable residential placement for her and to provide her with appropriate programming and training.

When no appropriate community placement could be found for Deborah P., the county board requested a hearing, which resulted in the order of April 6, 1977. That order required the Ohio Department of Mental Health and Mental Retardation, its regional office, and the local county board to plan and to develop a community residential facility for Deborah P. appropriate to her needs and less restrictive than an institutional

setting. The Ohio Department and regional office were required to provide temporary community placement while the plan was being developed, and were required to report their progress within 30 days of the court's order. Prior to the temporary placement, the institution in which Deborah P. was residing was ordered to prepare a current evaluation of her needs and to provide services to meet those needs.

PENNSYLVANIA: Halderman v. Pennhurst State School and Hospital, Civil Action No. 75-1345 (E.D. Pa., filed May 30, 1974).

As "MR and the Law" was going to press, we learned that, after an eight-week trial, Judge Raymond Broderick had issued a 72-page ruling to the effect that keeping retarded persons at Pennhurst violates their Fourteenth Amendment rights to equal protection and the Rehabilitation Act of 1973. According to Broderick, "Retarded persons in large institutions suffer from apathy, stunted growth, and loss of IQ....The smaller the living unit in which the retarded individual lives the higher the level of behavioral functioning that is shown by the individual." The court did not specify what the State of Pennsylvania must do to comply with his ruling. An order on relief will follow a special hearing set to begin on January 6. More details concerning this important case will be available in the next issue of "MR and the Law."

III. CASES WITH NO KNOWN NEW DEVELOPMENTS AND CLOSED CASES REPORTED IN EARLIER ISSUES OF "MENTAL RETARDATION AND THE LAW"

A. ARCHITECTURAL BARRIERS

Alabama: Snowdon v. Birmingham-Jefferson County Transit Authority, No. 75-G-330-S (N.D. Ala., June 24, 1975).

District of Columbia: Washington Urban League, Inc., et al. v. Washington Metropolitan Area Transit Authority, Inc., Civil No. 776-72 (D.D.C. 1976).

Maryland: Disabled in Action of Baltimore, et al. v. Hughes, et al., Civil Action No. 74-1069-HM (D. Md.).

Ohio: Friedman v. County of Cuyahoga, Case No. 895961 (Court of Common Pleas, Cuyahoga County, Ohio), consent decree entered November 15, 1972.

B. CLASSIFICATION

California: Larry P. v. Riles, No. C-71-2270 (N.D. Calif.), preliminary injunction order, 343 F. Supp. 1306 (1972), affirmed, 502 F.2d 963 (9th Cir. 1974); supplementary order, December 13, 1974.

Louisiana: Lebanks, et al. v. Spears, et al., consent decree, 60 F.R.D. 135 (E.D. La. 1973).

Massachusetts: Stewart, et al. v. Philips, et al., Civil Action No. 70-1199-F (D. Mass), filed September 14, 1970).

C. COMMITMENT

District of Columbia: United States v. Shor[illegible] (Superior Ct., D.C., November 13, 1974). No. 9076, (D.C. Ct. of Appeals, August 26, 1975).

Indiana: Jackson v. Indiana, 406 U.S. 715 (1972).

Michigan: White v. Director of Michigan Department of Mental Health, No. 75-10022 (E.D. Mich., filed August 6, 1975).

Pennsylvania: Mersel v. Kremens, No. 74-159 (E.D. Pa., August 20, 1975).

West Virginia: State ex rel. Miller v. Jenkins, No. 13340 (Supreme Ct. of Appeals, W.Va. at Charleston, March 19,

Wisconsin: State ex rel. Matalik v. Schubert, 47 Wis.2d 315, 204 N.W.2d 13 (Supreme Ct., Wis. 1973).

Wisconsin: State ex rel. Haskins v. County Court of Dodge County, 62 Wis.2d 250, 214 N.W.2d 575 (Supreme Ct., Wis. 1974).

D. CRIMINAL LAW

District of Columbia: United States v. Masthers, 539 F.2d 721 (D.C. Cir. 1976).

Georgia: Pate, et al. v. Parham, et al., Civil No. 75-46 Mac. (M.D. Ga., September 19, 1975).

E. CUSTODY

Georgia: Lewis v. Davis, et al., Civil Action No. D-26437 (Superior Ct., Chatham County, Ga.,July 19, 1974.

Iowa: In the Interest of Joyce McDonald, Melissa McDonald, Children, and the State of Iowa v. David McDonald and Diane McDonald, Civil Action No. 128/55162 (Iowa Supreme Court, October 18, 1972).

Iowa: In the Interest of George Franklin Alsager, et al. and the State of Iowa v. Mr. and Mrs. Alsager, Civil Action No. 169/55148 (Iowa Supreme Court, October 18, 1972).

F. EDUCATION

California: California Association for Retarded Children v. State Board of Education, No. 237277 (Superior Ct., Sacramento County, filed July 27, 1973).

California: Case, et al. v. State of California, Civil Action No. 101679 (Superior Ct., Riverside County).

Colorado: Colorado Association for Retarded Children v. The State of Colorado, Civil Action No. C4620 (D. Colo.).

Connecticut: Kivell v. Nemoitan, et al., No. 143913 (Superior Ct., Fairfield County, Conn., July 18, 1972).

Delaware: Beauchamp v. Jones, No. 75-350 (D. Del., filed October 23, 1975).

District of Columbia: Mills v. Board of Education of the District of Columbia, 348 F. Supp. 866 (U.S. D. Ct., D.C. 1972). Supplemental Orders on Contempt and Master, March and July, 1975.

Florida: Florida Association for Retarded Children, et al. v. State Board of Education, Civil Action No. 730250-CIV-NCR (S.D. Fla.).

Florida: Florida ex rel. Stein v. Keller, No. 73-28747 (Circuit Ct., Dade County, Fla.).

Florida: Florida ex rel. Grace v. Dade County Board of Public Instruction, No. 73-2874 (Cir. Ct., Dade County, Fla.).

Georgia: David v. Wynne, Civil No. LU-176-44 (S.D. Ga. 1976).

Illinois: C.S., et al. v. Deerfield Public School District #109, Civil No. 73 1 284 (Circuit Ct., 19th Judicial Circuit, Lake County, Ill.).

Illinois: W.E., et al. v. Board of Education of the City of Chicago, et al., Civil No. 73 CH 6104 (Circuit Ct., Cook County, Ill.).

Indiana: Dembowski v. Knox Community School Corporation, et al., Civil No. 74-210 (Starke County Ct., Ind., filed May 15, 1974).

Kentucky: Kentucky Association for Retarded Children v. Kentucky, No. 435 (E.D., Ky.), consent decree, November, 1974.

Maryland: Maryland Association for Retarded Children, Leonard Bramble v. State of Maryland, Civil Action No. 720733-K (D. Md.). In the Maryland State Court, Equity No. 77676 (Circuit Ct. for Baltimore County, April 9, 1974).

Michigan: Harrison, et al. v. State of Michigan, et al., Civil Action No. 38557 (E.D., Michigan).

New Hampshire: Swain v. Barrington School Board, No. Eq. 5750 (Superior Ct., New Hampshire, March 12, 1976).

New York: In the Matter of Tracy Ann Cox, Civil No. H4721-75 (N.Y. Family Ct., Queens County, April 8, 1976).

New York: In the Matter of Richard G (N.Y. Sup. Ct., App. Div., 2nd Dept., May 17, 1976).

New York: Reid v. Board of Education of the City of New York, No. 8742 (Commission of Education for the State of New York, decided November 26, 1973). Federal Court Abstention Order, 453 F.2d 238 (2d Cir. 1971).

North Carolina: Hamilton v. Riddle, Civil Action No. 72-86 (Charlotte Division, W.D., N.C.).

North Dakota: In re G.H., Civil Action No. 8930 (Supreme Ct., N.D., April 30, 1974).

North Dakota: North Dakota Association for Retarded Children v. Peterson (D.N.D., filed November 1972).

Ohio: Cuyahoga County Association for Retarded Children and Adults, et al. v. Essex, No. C 74-587 (N.D. Ohio, April 5, 1976).

Pennsylvania: Fialkowski v. Shapp,405 F. Supp. 946 (E.D. Pa. 1975).

Pennsylvania: Pennsylvania Association for Retarded Children, et al. v. Commonwealth of Pennsylvania, et al., 344 F. Supp. 1275 (3-judge Court, E.D., Pa. 1971).

Rhode Island: Rhode Island Society for Autistic Children, Inc., et al. v. Board of Regents for Education of the State of Rhode Island, et al., Civil Action File No. 5081 (D.R.I.), sipulations signed September 19, 1975.

Virginia: Kruse, et al. v. Campbell, et al., Civil No. 75-0622-R (E.D. Va., filed December 1, 1975).

Washington: Rockafellow, et al. v. Brouillet, et al., No. 787938 (Superior Ct., King County, Wash.).

West Virginia: Doe v. Jones (Hearing before the State Superintendent of Schools, January 4, 1974).

Wisconsin: Marlega v. Board of School Directors of City of Milwaukee, Civil Action No. 70C8 (E.D.,Wis.), consent decree, September, 1970.

Wisconsin: Panitch, et al. v. State of Wisconsin, Civil Action No. 72-L-461 (D. Wis.).

Wisconsin: State of Wisconsin ex rel. Warren v. Nusbaum, ___ Wisc.2d ___, 219 N.W.2d 577 (Supreme Ct., Wis. 1974).

Wisconsin: Unified School District No. 1 v. Barbara Thompson, Case No. 146488 (Cir. Ct., Dane Cty.). Memorandum Decision, May 21, 1976.

G. EMPLOYMENT

District of Columbia: National League of Cities v. Usery, ___ U.S. ___, 44 U.S.L.W. 4974 (June 24, 1976).

District of Columbia: Souder, et al. v. Brennan, et al., 367 F. Supp. 808 (D.D.C. 1973).

Florida: Roebuck, et al. v. Florida Department of Health and Rehabilitation Services, et al., 502 F.2d 1105 (5th Cir. 1974).

Indiana: Sonnenburg v. Bowen, Civil No. P.S.C. 1949 (Porter Cty. Cir. Ct., Ind., filed October 9, 1974).

Iowa: Brennan v. State of Iowa, 494 F.2d 100 (8th Cir. 1973).

Maine: Jortberg v. Maine Department of Mental Health, Civil Action No. 13-113 (D. Maine), consent decree, June 18, 1974.

Massachusetts: Smith and Doe v. United States Postal Service, Civil No. 76-2452-S (D. Mass., filed June 21, 1976).

Missouri: Employees of the Department of Public Health and Welfare, State of Missouri v. Department of Public Health and Welfare of the State of Missouri, 411 U.S. 279 (1973).

Montana: Littlefield v. State of Montana, Civil No. 38794 (1st Jud. Dist., Montana, October 1, 1976).

Ohio: Souder v. Donahey, et al., No. 75222 (Supreme Ct., Ohio).

Ohio: Walker v. Gallipolis State Institute, Case No. 75CU-09-3676 (Court of Common Pleas, Franklin County, Ohio), dismissed September 8, 1976.

Tennessee: Townsend v. Clover Bottom Hospital and School, No. A-2576 (Chancery Court, Nashville, Tenn. 1974). Denial of defendants' motion to dismiss affirmed, 513 S.W.2d 505 (Tenn. Supreme Court 1974), appeal dismissed and certiorari denied June 9, 1975. Application by state for stay of judgment denied by Mr. Justice Stewart, June 23, 1975.

Tennessee: Townsend v. Treadway, Civil Action No. 6500 (M.D. Tenn.), decided September 21, 1973.

Wisconsin: Weidenfeller v. Kidulis, 380 F. Supp. 445 (E.D. Wis. 1975).

H. GUARDIANSHIP

Connecticut: Albrecht v. Tepper, Civil No. H-263 (D. Conn., February 10, 1977).

Connecticut: McAuliffe v. Carlson, 377 F. Supp. 869 (D. Conn. 1974), supplemental decision, 386 F. Supp. 1245(D. Conn. 1975).

I. LIMITATION ON TREATMENT

Massachusetts: Jones v. Saikowicz, No. 711 (Mass. Sup. Jud. Ct., July 9, 1976).

J. PROTECTION FROM HARM

New York: Rodriguez v. State, 355 N.Y.S.2d 912 (Court of Claims 1974).

Pennsylvania: Janet D. v. Carros, No. 1079-73 (Court of Common Pleas, Allegheny County, Pa.), decided March 29, 1974.

K. STERILIZATION

Alabama: Wyatt v. Aderholt, 368 F. Supp. 1382 (M.D. Ala. 1972).

California: In re Kemp, 43 Cal. App. 3d 758 (Court of Appeals, 1974).

Missouri: In re M.K.R., 515 S.W.2d 467 (Supreme Ct., Mo. 1974).

North Carolina: Cox v. Stanton, et al., Civil No. 800 (E.D.N.C., filed January 8, 1974).

North Carolina: In re Moore, 221 S.E.2d 307 (N.C. Supreme Ct., 1976).

North Carolina: Trent v. Wright (E.D.N.C., filed Jan. 18, 1974).

Tennessee: In re Lambert, Civil No. 61156 (Tenn. Prob. Ct., Davidson County, March 1, 1976).

Wisconsin: In re Mary Louise Anderson (Dane County Court, Branch I, Wis., November 1974).

L. TREATMENT

Alabama: Pugh v. Locke and James v. Wallace, 406 F. Supp. 318 (M.D. Ala. 1976).

Alabama: Wyatt v. Hardin, 325 F. Supp. 781 (M.D. Ala. 1971), 344 F. Supp. 1341 (M.D. Ala. 1971), 344 F. Supp. 373, 387 (M.D. Ala. 1972), aff'd in part, modified in part sub nom. Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974).

California: Revels, et al. v. Brian, M.D., et al., No. 658-044 (Superior Ct., San Francisco).

Georgia: Burnham v. Department of Health of the State of Georgia, 349 F. Supp. 1335 (N.D. Ga. 1972), 503 F.2d 1319 (5th Cir. 1974), cert. denied, ___ U.S. ___, 43 U.S.L.W. 3682 (1975).

Hawaii: Gross v. Hawaii, Civil No. 43090 (Cir. Ct., Hawaii). Consent decree, February 3, 1976.

Illinois: Nathan v. Levitt, No. 74 CH 4080 (Circuit Ct., Cook County, Ill.), consent order, March 26, 1975.

Illinois: Rivera, et al. v. Weaver, et al., Civil Action No. 72C135.

Illinois: Wheeler, et al. v. Glass, et al., 473 F.2d 983 (7th Cir. 1973).

Massachusetts: Gauthier v. Benson, Civil No. 75-3910-T (D. Mass.).

Massachusetts: Ricci, et al. v. Greenblatt, et al., Civil Action No. 72-469F (D. Mass.), consent decree, November 12, 1973.

Michigan: Jobes, et al. v. Michigan Department of Mental Health, Civil No. 74-004-130 DC (Cir. Ct., Wayne County, Mich).

Mississippi: Doe v. Hudspeth, Civil No. J 75-36 (N) (S.D. Miss., filed February 11, 1975).

Missouri: Barnes, et al. v. Robb, et al., Civil No. 75 CV87-C (W.D. Mo., Central Division, filed April 11, 1975).

Ohio: Davis v. Watkins, 384 F. Supp. 1196 (N.D. Ohio 1975).

Pennsylvania: Roe v. Pennsylvania, No. 74-519 (W.D. Pa., filed June 9 1976).

Pennsylvania: Waller v. Catholic Social Services, No. 74-1766 (E.D., Pa.).

Tennessee: Saville v. Treadway, Civil Action No. Nashville 6969 (M.D. Tenn), decided March 8, 1974. Consent Decree, September 18, 1974.

Washington: Boulton v. Morris, No. 781549 (Superior Ct., King County, Wash., filed June 1974).

Washington: Preston v. Morris, Civil No. 77-9700 (Superior Ct., King County, Wash., filed April 23, 1974).

Washington: Washington v. White and Morris, No. 4350-I (Ct. of Appeals, Wash., January 31, 1977).

M. VOTING

Massachusetts: Boyd, et al. v. Board of Registrars of Voters of Belchertown, No. 75-141 (Sup. Jd. Ct., Mass., Sept. 30, 1975).

New Jersey: Carroll, et al. v. Cobb, et al, No. A-669-74 and A-1044-74 (Superior Ct., N.J., Appellate Division), decided February 23, 1976.

N. ZONING

California: Defoe v. San Francisco Planning Commission, Civ. No. 30789 (Superior Ct., Calif.).

California: Los Angeles v. California Department of Health, 2d Civil No. 48697 (Ct. of Appeals, Calif. 2d Appellate District, November 2, 1976).

Colorado: The City of Delta v. Thompson v. Nave and Redwood, No. 75-431 (Colorado Ct. of Appeals), decided December 11, 1975.

Florida: City of Temple Terrace v. Hillsborough Association For Retarded Citizens, Inc., 44 U.S.L.W. 2189 (Fla. Ct. App. 2d District), decided October 10, 1975.

Massachusetts: Zarek v. Attleboro Area Human Services, Inc., Civil No. 2540 (Superior Ct., Mass.).

Michigan: Doe v. Damm, Complaint No. 627 (E.D., Mich.).

Michigan: Michigan Association for Retarded Children v. The Village of Romeo, Civil No. 670769 (E.D. Mich.). Federal Absetntion Order, August 2, 1976. No. 76-6267-C2 (Mich. Cir. Ct., Macomb County, March 1, 1977).

Minnesota: Anderson v. City of Shoreview, No. 401575 (D. Ct., Second Judicial District, Minn.), decided June 24, 1975.

Montana: State ex rel. Thelan v. City of Missoula, No. 13192 (Supreme Ct., Montana), decided December 8, 1975.

New York: Little Neck Community Association v. Working Organization for Retarded Children (N.Y. Sup. Ct. App. Div., 2d Dept., May 3, 1976).

New York: Village of Belle Terre v. Borass, 91 S.Ct. 1536 (1974).

Ohio: Boyd v. Gateways to Better Living, Inc., Case No. 73-CI-531 (Mahoning County Court of Common Pleas).

Ohio: Driscoll v. Goldberg, Case No. 72-CI-1248 (Mahoning County Ct. of Common Pleas, Ohio), 73 C.A. 49 (Ohio Court of Appeals, 7th District), decided April 9, 1974.

Wisconsin: Browndale International, Ltd. v. Board of Adjustment, 60 Wis.2d 182, 208 N.W.2d 121 (Wis. 1973), cert. denied, 94 S.Ct. 1933 (1974).

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